

REMARKS

Status of the Claims

Upon entry of the foregoing amendments, claims 1-6, 8-18, 20-28, and 30 are pending. Claims 1, 8-10, 12, 14-15, 18, 20-21, 24, and 27 have been amended herein. Claims 7, 19, and 29 have been cancelled without prejudice or disclaimer of the subject matter therein. Applicants respectfully reserve the right to prosecute the subject matter of the cancelled claims in one or more continuation and/or divisional applications. Applicants respectfully submit the above amendments do not constitute new matter. Support for the amendments is found throughout the specification and in the claims as originally filed. *See e.g.*, originally filed claims 10 and 18.

Response to Restriction Requirement

The Office Action requires restriction to one of Groups I-IV, provided *infra*, which are purportedly are not so linked as to form a single general inventive concept under PCT Rule 13.1. The Office Action requires that Applicants elect one of the following four inventions:

- Group I: Claims 1-17, 24, 27, and 29-30, drawn to a method of using dsRNA construct to reduce seed shattering in plant, the transgenic Brassicaceae plants made by said method, and the seed thereof.
- Group II: Claims 18-21, drawn to a method of using dsRNA construct to reduce seed shattering in oilseed rape plant.
- Group III: Claims 22, 23, 25, and 26, drawn to a chimeric DNA construct for producing dsRNA, a transgenic Brassicaceae plant comprising the chimeric DNA, and the progeny thereof.
- Group IV: Claim 28, drawn to an agricultural method.

Applicants hereby provisionally elect **Group I**, which covers claims 1-17, 24, 27, and 29-30, drawn to, according to the Office Action, a method of using dsRNA construct to reduce seed shattering in oilseed rape plant **with traverse**. Applicants reserve the right to file divisional and/or continuation applications that relate to the non-elected subject matter. Applicants respectfully request reconsideration of the Restriction Requirement in view of the following remarks.

According to the Office Action, the inventions listed as Groups I-IV do not relate to a single inventive concept under PCT Rule 13.1, since under PCT Rule 13.2 they lack the same or corresponding technical features. The Examiner states that “[t]he technical feature linking the inventions of Group I-IV is the chimeric dsRNA construct that can silence the gene involved in the development of a dehiscence zone and valve margin of a pod of a plant.” O.A. at 3. The Examiner argues this that such a construct is disclosed in Vancanneyt et al. 2002. *Id.* Accordingly, the Examiner concludes this technical feature does not constitute a special technical feature as defined by PCT Rule 13.2, as it does not define a contribution over the prior art.

Applicants respectfully disagree. Indeed, Applicants submit the special technical feature in accordance with PCT Rule 13.2 linking the inventions is not the mere use of dsRNA constructs to silence a gene involved in the development of a dehiscence zone and valve margin of a pod of a plant. Rather, it is the use of a dsRNA silencing construct resulting in a weaker or incomplete silencing phenotype of a gene involved in the development of a dehiscence zone and valve margin of a pod of a plant such that the podshatter resistance is increased, but not to such a degree that the pods can no longer be opened using agronomically conventional means such as a combine harvester. The application exemplifies such dsRNA constructs as being expressed from a weak promoter, or by using the nucleotide sequence of a gene involved in the development of a dehiscence zone and valve margin of a pod of a plant different from oilseed plants.

As indicated in the application (paragraphs [00010] and [00011]), and as acknowledged by the Examiner in the Office Action at page 3, first paragraph, Vancanneyt et al. describes the use of dsRNA constructs resulting in complete podshatter resistance, whereby the pods could no longer be opened, except for applying significant force to open the pods by random fracture. Such significant force to open the pods cannot be considered an agronomically relevant threshability. Accordingly, Applicants submit that Vancanneyt et al. does not teach or suggest the technical feature linking the claims.

Restriction has been made between the claims of Group I, drawn to a method to reduce seed shattering in plants, and those of Group II, drawn to a method to reduce seed shattering in oilseed rape plants. Without acquiescing to the correctness of the restriction, the claims of Group I have been amended to recite oilseed rape plants. In view of these amendments, Applicants respectfully request withdrawal of the restriction between Groups I and II.

The Office Action also requires restriction to one of the nucleotide sequences of SEQ ID NO: 1-3 and 9-11. Applicants hereby elect the nucleotide sequence of SEQ ID NO: 1 (*IND* gene of *A. thaliana*).

In view of the above remarks, it is respectfully requested that the Restriction Requirement be withdrawn and that all claims be allowed to be prosecuted in the same patent application. In the event that the requirement is made final and in order to comply with 37 C.F.R. § 1.143, Applicants reaffirm the election with traverse of claims 1-17, 24, 27, and 29-30 (Group I) and SEQ ID NO: 1.

CONCLUSION

In view of the above remarks, early notification of a favorable consideration is respectfully requested.

Please charge **Deposit Account No. 50-0206** in the amount of \$2,160.00, which covers the five-month extension of time fee. The Commissioner is hereby authorized to charge any additional fees which may be required to enter this response, or credit any overpayment, to **Deposit Account No. 50-0206**.

Respectfully submitted,

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